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April 15, 2021

Michael Mosier, Esq.
Acting Director, Financial Crimes Enforcement Network
U.S. Department of Treasury
2070 Chain Bridge Road
Vienna, Virginia 22182

By overnight mail

Re: "Deeply Concerning" Reports of Abuse of Confidential FinCEN Data

Dear Mr. Mosier:

I am counsel for Francisco Garcia Cabeza de Vaca. He is the Governor of the Free & Sovereign State of Tamaulipas, Mexico. In addition, he, his brothers and his spouse are all United States citizens. I am writing to you because of news reports that confidential FinCEN information is being leaked to the Mexican press by the Mexican Financial Intelligence Unit, or "UIF," and its leader Santiago Nieto. I know that such reports would be of concern to you. If you confirm the reports, it would expose an extreme breach of trust by the UIF and Mr. Nieto.

Introduction: FinCEN and the Egmont Group – The Importance of Confidentiality

FinCEN plays an important role in promoting national and international security and acts as the Financial Intelligence Unit (FIU) of the United States. Through the Egmont Group, FinCEN shares confidential U.S. data with FIUs around the world. An FIU that receives information from the United States must preserve its confidentiality, even while using it to generate legitimate law enforcement investigative leads. The receiving FIU also must not use confidential information for political purposes, such as to harass or discredit political opposition.

One type of sensitive information that FinCEN may share is a Suspicious Activity Report ("SAR"). SARs are transactional reports generated by U.S. financial institutions as part of their internal governance. They do not necessarily reflect criminal or illegal activity: in fact, most SARs do not even indicate an active U.S. investigation, much less the existence of a U.S. crime.

On March 3, 2021, the Chair of the Egmont Group, Ms. Hennie Verbeek-Kusters, reported "deeply concerning allegations" that Financial Intelligence Units (FIUs) were

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This material is distributed by David Gerger on behalf of Francisco Garcia Cabeza de Vaca.

Additional information is available at the Department of Justice, Washington, DC.

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abusing confidential information received from other countries. Ms. Verbeek-Kusters did not identify the offending FIUs. However, as set out below, the Mexican UIF is reportedly publicizing confidential “suspicious activity reports” about my client that it received from FinCEN. Such publication would violate FinCEN and Egmont Group rules.

Disclosing confidential information is improper regardless of motive. In this situation, however, it is impossible to ignore the possibility of political motive. The Governor is a member of the Partido Accion Nacional, or PAN political party; he sometimes has opposed the policies of the National Regeneration Movement (“MORENA”) party of the current Mexican President; he is a member of a 10-governor “Federalist Alliance” that has expressed concern over MORENA’s concentration of power. The head of the UIF – Mr. Nieto – has made public inflammatory statements against the Governor in the press. While the Attorney General of Mexico has criticized leaks that undermine the presumption of innocence, the country’s President reportedly defended Mr. Nieto: “Santiago doesn’t do anything without consulting [me]” – a “defense” that questions political independence and separation of powers.

Apparent Leaks by the Mexican FIU (UIF)

Against this backdrop, journalists in Mexico have recently published SAR information about the Cabeza de Vaca family, attributing the UIF and FinCEN as the source.

Proceso is a widely read magazine in Mexico. On December 5, 2020, it published a story entitled, “*Mexico and the U.S. Investigate the Governor of Tamaulipas.*” The article discloses “suspicious activity reports” about members of the Cabeza de Vaca family, with the “source” being “FIU and Fincen” – as if that means they are under investigation. One example from the article involves Ismael Garcia Cabeza de Vaca, brother to Francisco, and himself a senator for the State of Tamaulipas:

Spanish:

▪ Entre el 8 y el 12 de abril de 2017
“registró informes de actividad sospechosa del Lone Star National Bank por 138 mil dólares”.

Fuente: UIF y Fincen

English Translation:

Between April 8 and 12 of 2017 “suspicious activity reports were registered with Lone Star National Bank for \$138 thousand dollars”

Source: FIU and Fincen

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Another example involves a bank transaction of another brother of Francisco:

Spanish:

- Registra un reporte por actividad sospechosa en JP Morgan Chase Bank por un depósito en efectivo de 15 mil dólares que cambió luego a 9 mil dólares "en un intento de eludir el reporte".

Fuente: UIF y FinCen

English Translation:

A report of suspicious activity in JP Morgan Chase for a cash deposit of 15 thousand dollars that later changed to 9 thousand dollars "in attempt to avoid reporting".

Source: FIU and FinCen

These are just two out of 15 examples cited in the *Proceso* article.

Reforma is another popular Mexican news source. On March 6, 2021, it published an article entitled, "*They Link Cabeza de Vaca with a Signed Contractor.*" Here, too, the article purports to disclose financial transactions of Cabeza de Vaca that the author obtained from the UIF (or from a complaint filed by the UIF).

Spanish

"(Reséndez) se encuentra incluido en la lista Financial Crimes Enforcement Network (FinCen), con fecha de inserción de 2008 por actividad sospechosa de lavado de dinero por un monto de 4 millones 315 mil 800 dólares", dijo la UIF en su querrela a la FGR y que fundamenta la solicitud de desafuero del Gobernador de Tamaulipas.

English:

"(Resendez) was found included in the list from the Financial Crimes Enforcement Network (FinCen), with a date of 2008 for suspicious activity of money laundering in the amount of 4 million, 315 thousand 800 dollars," said the FIU in its complaint to the FGR that serves as the basis for the accusation against the Governor of Tamaulipas.

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Publicizing the content of a SAR, or even the fact of a SAR's existence, violates the Egmont principles; damages innocent citizens; and undermines confidence in law enforcement locally and internationally. As the Egmont Group Chair summarized on March 3:

"Any abuse of FIU powers compromises trust and is detrimental to the credibility of our global network." *See* Ex. A.

Trusting that shared information, such as SARs, will remain confidential is critical to the efficacy of the group. If the news reports are to be believed, then the UIF has violated that trust.

The Consequences of Disclosing SARs in the United States

SARs are strictly confidential under United States law. *See* 31 C.F.R. § 1020.320(e) ("A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized [by law]."). Improper disclosure is a felony crime punishable by fines and up to five years in prison. *See* 31 USC 5322(a).

Recent prosecutions highlight the seriousness of a violation. In 2018, the United States filed criminal charges against FinCEN senior advisor Natalie Edwards for disclosing SARs-derived information to a news reporter who was investigating supporters of President Donald Trump. She pled guilty and is scheduled to be sentenced on May 20, 2020. *See United States v. Edwards*, 19 Cr. 640 (S.D.N.Y. 2018). In support of the government's case against Ms. Edwards, FinCEN submitted a letter to the sentencing judge detailing the gravity of disclosing SARs:

"A SAR is not a report of confirmed illegal activity; rather, it identifies suspicious activity based upon a financial institution's reasonable assessment of available information. The subject of a SAR may have a legitimate basis for the identified conduct, and therefore, should be protected against unauthorized exposure that could damage an innocent person's reputation." *See* Ex. B.

See also United States v. Fry, 29 Cr. 102 (N. D. Cal. 2019) (IRS agent charged and pled guilty for sharing SAR reports that were then leaked to the press).

Regardless of the criminal law, the disclosures described above merit concern.

Nor would this be the first time that officials in Mexico may have abused the trust of the Egmont system. We understand that in April 2004, FinCEN suspended sharing information with the UIF, after it breached Egmont protocols through the unauthorized disclosure of FinCEN information. While the details of the breach are not accessible to the

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public, FinCEN acknowledged that it temporarily suspended cooperation because of unauthorized disclosures by Mexican governmental officials. *See* FinCEN news, *available at* https://www.fincen.gov/sites/default/files/news_release/20040706.pdf. We are not asking that cooperation cease – only that the parties honor the Egmont Group principles.

Conclusion

The abuse of confidential information against any person warrants immediate concern, and we urge you to investigate what appear to be continuing leaks against my client. Please let me know that you have received this letter and, to the extent your office allows, that steps can be taken to restore confidentiality and prevent breaches in the future.

Thank you for your attention.

Respectfully,

A handwritten signature in blue ink that reads "David Gerger". The signature is fluid and cursive, with the first name "David" and last name "Gerger" clearly legible.

David Gerger

cc: Ms. Hennie Verbeek-Kusters, by email to commissaris@FiU-Nederland.nl
Chair of the Egmont Group

Mexico News Daily

Elements in government don't respect presumption of innocence: Attorney General

General

Statement seen as a veiled charge against the Financial Intelligence Unit of the federal government

Published on Friday, January 10, 2020

One needn't look much farther than social media (or some of the comments on *Mexico News Daily*) to be aware that the presumption of innocence is a foreign concept for many.

Now there are elements within the federal government that don't respect that presumption either, according to Attorney General Alejandro Gertz Manero.

The attorney general's claim came in response to a question asked at a gathering of diplomats in Mexico City.

"The Attorney General's Office as an autonomous entity has been very respectful of the presumption of innocence . . . [but] there are elements, not in the Attorney General's Office, but in the government that don't respect that presumption," he responded.

". . . We have it very clear, we don't make . . . assertions that go against the presumption of innocence," Gertz Manero said, adding that statements of such a nature are not legitimate and create a "serious crisis" in the process of prosecuting a suspected criminal.

The attorney general declined to name the "elements" to which he was referring but added that "we all know" who they are.

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Additional information is available at the Department of Justice, Washington, DC.

One of the people Gertz Manero is believed to have been referring to is Santiago Nieto, head of the government's Financial Intelligence Unit (UIF).

Nieto, who was [fired from his role as the top electoral crimes prosecutor](#) in the previous government, has taken on a leading role in the fight against corruption initiated by the current administration and spoken out about several investigations conducted by the UIF.

He has revealed at press conferences that the UIF has frozen or requested the freezing of bank accounts held by high-profile figures including former cabinet secretary Rosario Robles, ex-Pemex chief Emilio Lozoya and former Pemex workers' union leader Carlos Romero Deschamps.

National Action Party Senator Xóchitl Gálvez charged that the government is using the UIF to carry out a campaign of "fiscal terrorism."

". . . I think that it should be more discreet," she said.

The Democratic Revolution Party expressed a similar sentiment, asserting in a statement that President López Obrador uses the UIF to carry out revenge attacks on his political enemies.

Responding to Gertz Manero's insinuations, López Obrador defended Nieto at his morning press conference on Thursday.

"Santiago doesn't do anything without consulting with the president, you can't blame him. Speaking frankly, imagine if I, here, devoted myself to reporting about money laundering, it's not my job, another public servant has to do it as long as it doesn't affect due process. We're obliged to act with adherence to the law, it's a matter of coming to an agreement [with the FGR]," he said.

Yet according to the operating guidelines established by the international network of UIFs, they should operate autonomously and independently, which would likely rule out consultations with the president.

Meanwhile, López Obrador himself has come very close to disrespecting the presumption of innocence if he hasn't actually crossed the line.

[At a press conference on January 2](#), López Obrador questioned where García Luna's wealth could have come from if he didn't accept bribes from the Sinaloa Cartel as the United States government alleges.

"Where did [his] houses and apartments come from," he asked.

López Obrador has also insinuated that former president Felipe Calderón was complicit with organized crime although he has ruled out an investigation in relation to the charges against his security secretary "because it would create the perception that we're doing it for political purposes."

Egmont Group Chair's Statement

March 3, 2020

EG CHAIR'S STATEMENT ON ALLEGATIONS OF FIUS MISUSING THEIR POWERS TO COMBAT ML AND TF

The Egmont Group has been informed of financial intelligence units (FIUs) allegedly misusing the powers conferred to them under their national AML/CFT frameworks. These deeply concerning allegations pertain to FIUs limiting or coercing civil society actors for their work and critiques of current governments in their jurisdictions. The Egmont Group takes such allegations seriously. Moreover, the Group does not condone such behavior and firmly opposes any abuse of FIU powers.

International standards mandate FIUs to receive and analyze suspicious transaction reports and other information relevant to money laundering, associated predicate offences and terrorist financing, and to disseminate the results of that analysis for the purpose of combating money laundering and terrorist financing. To undertake their functions properly, FIUs are mandated to obtain additional information from reporting entities, to have access on a timely basis to the financial, administrative and law enforcement information and to exchange information with foreign FIUs. The Egmont Group considers any misuse of FIUs powers for purposes other than those mentioned as contrary to

international AML/CFT standards and our organization's spirit. It also erodes the critical role FIUs play as an interface between the private sector and law enforcement authorities.

International financial intelligence sharing is vital for protecting the global financial system's integrity and is a cornerstone for international anti-money laundering and counter-terrorism financing efforts. The Egmont Group facilitates international cooperation by providing a secure platform for exchanging information and a clear system of rules (principles) for information exchange. All Egmont Group members are expected to abide by the principles for information exchange.

Trust is an essential component of the Egmont Group. The Egmont Group builds trust among its members by promoting and holding firm on FIUs' integrity, transparency, and accountability. Any abuse of FIU powers compromises trust and is detrimental to the credibility of our global network.

The misuse of FIU powers against government opponents can indicate undue influence and interference in FIU operations.

When FIUs lack autonomy or operational independence, it undermines the effectiveness of their activities and (inter)national ML/TF investigations and prosecutions. FIUs must have the requisite levels of autonomy and operational independence to ensure the integrity of the information shared between FIUs and their domestic partners. For this reason, the Egmont Group takes any allegations concerning a lack of operational independence and autonomy very seriously.

The Egmont Group aligns its position with the FATF's Recommendation 29 requirements and its interpretive note. As

such, the Egmont Group urges countries to protect their FIUs' operational independence and autonomy. FIUs must refrain from any misuse of their powers and continue to build resilience against undue political, government or industry influence or interference, which might compromise their operational independence.

- Hennie Verbeek-Kusters, Chair of the Egmont Group